MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2018/2019

ULV4612 – LAW OF EVIDENCE I

(All Sections / Groups)

22 OCTOBER 2018
Reading Time : 9.00 a.m. – 9.15 a.m.
(15 Minutes)
Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 3 pages with 5 Questions only.

3. Attempt **ALL** questions in **PART A** and any one questions in **PART B**. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPY of the following statutes into the exam venue:
   i. Evidence Act 1950; ii. Evidence of Child Witness Act 2007; and iii. Criminal Procedure Code.
   "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

PART A: Compulsory

Instruction: Attempt **ALL** questions.

QUESTION 1

At the end of the case for the prosecution, the Deputy Public Prosecutor ('DPP') submitted in respect of the test to be applied as follow:

> *"The burden on the prosecution at the end of the prosecution's case is still the principle as stated in Haw Tua Tau v PP (1981) 2 MLJ 49. This is confirmed by the recent amendment as found in s.173(h)(iii) of CPC for summary trials and s.180(4) CPC for trials in the High Court. The amendment is in Act 1274 which came into effect in 2006. The words used in Haw Tua Tau were phrased in the negative i.e. "evidence which is not inherently incredible" whereas the 2006 Amendment is phrased in the positive. But it means the same thing i.e. credible evidence must be adduced proving each ingredient of the offence. In fact when tabling the Bill for the Amendment in now Act 1274, the minister had clearly stated that the intention behind the amendment made is to return to the principle established in the case of Haw Tua Tau v PP."*

As the defence counsel, prepare your reply to the DPP's submission.

(25 Marks)

QUESTION 2

Kayu was charged for the rape and murder of Tina, behind a bush in Taman Tasik Cempaka. Apply the main principles relating to the Law of Evidence, determine the admissibility of the following evidence that the prosecution intends to produce during Kayu's trial.

(a) Kayu was Tina's ex-boyfriend. Their relationship came to an end when Tina befriended a new guy at her college.

(5 marks)

(b) A vaginal swab taken from Tina contained semen. The result of a DNA analysis confirmed the match to the sample belonging to Kayu.

(6 marks)

Continued...

(c) On the date of the alleged crime, Kayu's roommate, Abu saw him at the entrance of Taman Tasik Cempaka. When Abu asked what he was doing there, Kayu replied that he wanted to take a walk in the park.

(6 marks)

(d) At the hospital before Tina succumbed to death, she told Dr Suhaimi, the doctor who treated her that her ex-boyfriend, Kayu, was the one who stabbed her.

(8 marks)

(Total: 25 Marks)

QUESTION 3

(a) Distinguish between direct evidence and circumstantial evidence.

(12 marks)

(b) "...to hold that an identification parade must, in all circumstances, be conducted in order to sustain a conviction would be too stringent" per Chong Siew Fai CJ (Sabah & Sarawak) in Arumugan s/o Muthusamy v PP [1998] 3 MLJ 73.

Based on the above, explain when it would not be necessary to conduct an identification parade in a criminal trial.

(13 marks)

(Total: 25 marks)

Continued...

PART B: Attempt **ONE** question **only**.

QUESTION 4A

Abu entered into a contract to purchase 100 boxes of imported apples from Ali. According to the contract, Ali was to deliver the apples upon receiving the full payment of the sum of MYR10,000.00. Abu claimed that Ali did not deliver the apples despite making full payment. On the other hand, Ali denied receiving any payment from Abu. Abu has instituted legal action against Ali and intends to produce the following evidence:

(1) A receipt of payment for the sum of MYR10,000.00 made to Ali's company which was prepared and signed by Ahmad who was the finance officer for Ali's company. Ahmad is no longer working in Ali's company and has migrated to Canada about a month ago.

(2) An original document of his bank statement showing a transfer of MYR10,000.00 to Ali's company. Below the bank statement, there is a sentence stating: 'This is a computer generated document, no signature is required.'

With reference to the Evidence Act 1950 and decided cases, critically evaluate the admissibility on the above documents.

(25 Marks)

QUESTION 4B

A common manner in expressing an intention to exclude the admission is to ensure that the communications are endorsed with the words, 'without prejudice'.

With reference to the relevant authorities, critically evaluate the common features of 'without prejudice' communication.

(25 Marks)

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